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STATE FOR IO-RHS, DRL-MLGA, L-HRR

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SUBJECT: COMMUNICATION FROM SR ON THE PROMOTION AND
PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND
EXPRESSION AND SR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS

¶1. Mission has received a communication from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders. This communication is number 38 on the Geneva 2008 Communications Log.

¶2. Begin text of letter. Excellency, We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 7/36 and 7/8.

In this connection, we would like to draw the attention of your Government to information we have received regarding Mr. Athemay Sterling, a Colombian citizen. Mr. Athemay Sterling is Director of the Centro de Derechos Humanos e Interpretación Política de la Universidad Santiago de Cali en Defensa de los Derechos Humanos (Human Rights and Political Interpretation Centre at the University of Santiago de Cali for the Defense of Human Rights), and is a member of Comité por la Defensa de los Derechos Humanos (CPDH - Permanent Committee for the Defense of Human Rights) in Colombia.

According to information received:

On 30 June 2008, Mr. Athemay Sterling arrived in the United States of America. His visa was canceled upon arrival and he was held in administrative detention at the Krome detention centre in Miami Florida. For 48 hours, no food was provided and no explanation was given to him as to why he was being detained. He had allegedly undergone intensive interrogation in particular about presumed links with a former guerrilla group known as M-19.

Mr. Athemay Sterling had been on his way to Washington to provide information to the Inter-American Commission for Human Rights regarding environmental and health rights violations in Colombia about which he had communicated with the commission. He had planned to stay in the United States of America until 22 July 2008. However, he currently remains in detention.

On 30 July 2008, a hearing was held regarding the detention of Mr. Athemay Sterling. According to the immigration police he is undergoing an administrative procedure. No explanation for his detention has yet been given by the immigration police.

Concern is expressed that Mr. Athemay Sterling is unable to carry out his legitimate work in the defense of human rights while he is in detention. Further concern is expressed for the physical and psychological integrity of Mr. Athemay Sterling while he is in detention.

In this connection, we would like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental

Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration, and in particular to the article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We should also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression of Mr. Athemay Sterling, in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights which provides that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

We would like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association as recognized in article 22 of the International Covenant on Civil and Political Rights, which provides that "everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

In the event that your investigations support or suggest the above allegations to be correct, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Athemay Sterling are respected and accountability of any person guilty of the alleged violation is ensured. We also request that your Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Athemay Sterling in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

11. Are the facts alleged in the above summary of the case accurate?

¶2. Has a complaint been lodged?

¶3. Please provide information concerning the legal grounds for the detention of Mr. Athemay Sterling, and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on human rights defenders.

We undertake to ensure that your Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration. Ambeyi Ligabo, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders. End text of letter.

TICHENOR

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